IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 1368 of 2005
with
CIVIL APPLICATION NO 10623 of 2003
In
SPECIAL CIVIL APPLICATION No. 3702 of 2002

For Approval and Signature:

HONOURABLE MR.JUSTICE B.J.SHETHNA
HONOURABLE MR.JUSTICE M.C.PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NARUBHA GHEMARSINH DARBAR - Appellant(s)

Versus

GUJARAT STATE ROAD TRANSPORT CORPORATION - Respondent(s)

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Appearance :
MR GK RATHOD for Appellant(s) : 1,
MR ASHISH M DAGLI for Respondent(s) : 1,
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CORAM : HONOURABLE MR.JUSTICE B.J.SHETHNA
and
HONOURABLE MR.JUSTICE M.C.PATEL

Date : 11/10/2005

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE B.J.SHETHNA)

Admit. Shri Ashish Dagli waives service of Notice for the respondent. At the joint request of the learned

Counsel for the parties the matter is taken up today for final hearing and disposed of by this Judgment.

The Applicant – workman Shri Narubha Ghemarsinh Darbar, working as Driver with the respondent – Corporation since 1988, was dismissed from service on the ground that in the night of 13.3.1996 when he was on duty from Palanpur to Okhapuri he, along with two other persons, took the Bus unauthorizedly and drove it for 99 k.mtrs. distance for consuming liquor. In the Departmental Inquiry the charge levelled against the workman was found to be proved, therefore, he was dismissed from service. Hence, Reference No.(LCP) 69/99 was filed before the Labour Court, Palanpur. The Labour Court surprisingly accepted the defence of the workman-driver that at that point of knife the two persons forced him to take the bus for 99 k.mtrs., and that criminal case of consuming liquor was registered against him u/s.66(1)(b) and 85(1)(c) of the Bombay Prohibition Act was not proved against the workman beyond reasonable doubt and therefore he was acquitted by the competent Criminal Court. Therefore, the Labour Court quashed and set aside the termination order and ordered that the workman to be reinstated in service on his original post with continuity, but without back wages. Aggrieved by the

impugned Judgment and Award of reinstatement in service passed by the Labour Court, the respondent – Corporation approached this Court by way of Special Civil Application No.3702 of 2002 under Art.226 of the Constitution. After hearing the learned Counsel for the parties the learned Single Judge of this Court by Judgment and order dated 22.1.2003 allowed the writ petition filed by the respondent – Corporation as the learned Single Judge was of the considered opinion that the misconduct committed by the workman – driver was of a very grave nature. Therefore, such a person cannot be reinstated in service. The learned Judge also expressed his anguish in his order against the findings recorded by the Labour Court of accepting the defence of the respondent – workman that at the point of knife two persons forced him to take bus for about 100 k.mtrs., distance. If such type of defences are to be believed then no workman can be punished. When the impugned Judgment passed by the Labour court found to be absolutely perverse then the learned Single Judge of this Court had no option but to interfere with the same in his extra-ordinary writ jurisdiction and accordingly the learned Single Judge has exercised his extra-ordinary jurisdiction against the respondent – workman in a writ petition filed by the Corporation while allowing the

same.

In a recent Supreme Court Judge, the Hon'ble Apex Court made it clear that merely because the workman is acquitted by the Criminal Court is no ground for setting aside the termination order if it is validly passed after due departmental inquiry. In the instant case it must be stated that the learned Judge himself found that the departmental inquiry held against the workman was legal and in accordance with law. In that view of the matter there was no question of interference by him. Therefore, when he quashed and set aside the termination order then such an order cannot be allowed to be sustained, as it was rightly quashed and set aside.

In view of the above discussion, we do not find any substance in this Appeal and accordingly this Appeal fails and is hereby dismissed.

Civil Application No.10623/03 (for stay) is dismissed as the main Appeal is dismissed. No order as to costs.

(B.J.SHETHNA,J.)

(M.C.PATEL, J.)

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